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Court Forbids Book About CIA

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VICTOR L. MARCHETTI wants an unabridged right to what's on his mind. Marchetti is a former employe of the Central Intelligence Agency and as such has been denied the privilege of writing his memoirs.

When Marchetti resigned from the CIA in September 1969, he began to write about his experiences and first-hand knowledge of the inner workings of the government agency responsible for international espionage, intelligence and related cloak and dagger activities.

He published a novel, "The Rope Dancer," in 1971 that had as its central plot the perils of a CIA employe who provided secret United States documents to the Soviet Union. This was followed by a magazine article in April of last year entitled "CIA: The President's Loyal tool."

This was followed by a court action by the CIA to stop Marchetti from writing.

Marchetti resisted the suit on the ground that the First Amendment guaranteeing freedom of press protected him from any restraint by the CIA. The case got as high as the Supreme Court, which voted 6 to 3 last December not to get involved.

THE HIGH COURT'S action lets stand and appeals court ruling by Judge Clement Haynsworth that when Marchetti signed an agreement with the CIA in 1955 that he would protect the internal secrecy of the agency, he in effect signed away his right to freedom of expression.

Haynsworth, noting that Marchetti had signed a secrecy agreement when he joined the CIA promising not to divulge any of the agency's classified information, said in his order last May, "We find the contract (between Marchetti and the CIA) constitutional and otherwise reasonable and lawful."

It has frequently been said by legal scholars that the cases rejected for full hearing by the Supreme Court constitute a body of judicial action fully as important as the few cases heard by the court and upon which written opinions are issued.

THIS ASSUMPTION may again be demonstrated in the Marchetti case. The former CIA agent, currently under court injunction not to publish anything about

the CIA without prior approval, intends to complete a book about the agency and have it published by Alfred Knopf & Co.

Marchetti said recently that he intended to permit the CIA to review the book, but that if the agency vetoed publication, he would challenge its position in the courts charging violation of freedom of the press.

The issue at that time could be similar to one aspect of the controversy that arose in the case of the Pentagon papers. Can the Federal Government, acting through the courts, restrain publication of material relating to public affairs?

The Supreme Court decided 6 to 3 in June 1971, that the New York Times and the Washington Post — along with a number of other newspapers including the Post-Dispatch — had the right to publish secret Pentagon documents showing that the Government had concealed, distorted and misrepresented facts relating to American involvement in the Vietnam war.

Marchetti insists that none of the material in his books or articles threatens the security of the U.S. or violates the spirit of the agreement he signed in 1955. He has used material that is still classified secret, but in nearly every case it is material that has already been disclosed to the public.

Furthermore, Marchetti contends that the CIA and similar government agencies promiscuously classify material and information for the sole purpose of keeping it from the public and not because it has anything to do with the security of the nation.

"I BELIEVE in intelligence," he told the Post-Dispatch recently, "but not in hanky-panky. International espionage is one thing, but meddling in the affairs of other countries is something else. The whole concept of the CIA has to be rethought, with secrecy kept to a bare minimum. The main purpose of secrecy classifications now is to keep the public in the dark."

Marchetti, who held a number of jobs in his 14-year career with the CIA, including special assistant to the deputy director, the agency's second in command, says that much of the international espionage that goes on is well known to the governments involved but not to the citizens of those countries.

"Hostile governments often conspire to keep information from the people," Marchetti said. "The Russians knew of the first secret U-2 flights over their country in the late 1950s, five days after they began, but kept this information from the Russian people for months just as the U.S. government kept it from Americans. There have been similar two-country cover-ups involving the U.S. and certain other countries for many years."

In handing down his ruling last May, Haynsworth alluded to the conflict between the First Amendment guarantees of freedom of press and the need for a government to preserve confidentiality in some of its sensitive international and domestic dealings.

"We readily agree with Marchetti that the First Amendment limits the extent to which the United States, contractually or otherwise, may impose secrecy requirements upon its employes and enforce them with a system of prior censorship," Haynsworth said.

HOWEVER, he balanced this view in favor of the Government by later quoting the late Justice Felix Frankfurter: "Free speech is not so absolute or irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights."

The Marchetti case thus stands in contrast to that of the Pentagon papers at this point. In the Pentagon papers case, the high court reasoned that the government had failed to prove that publication actually would endanger the national security, and thus came down on the side of freedom of the press.

In the Marchetti case, the Supreme Court has let stand a lower court ruling that says in effect, the Government's in-

terest in maintaining secrecy is more important than the public's right to know.

It is, from a legal point of view, unfortunate that the Marchetti case came to the high court burdened by two special circumstances: One, his 1955 agreement not to divulge information about the CIA without the agency's approval, and two, his insistence on the right to publish without actually having a manuscript in hand as "Exhibit 1."

The second of these circumstances is scheduled to be erased this spring when Marchetti completes his nonfiction

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